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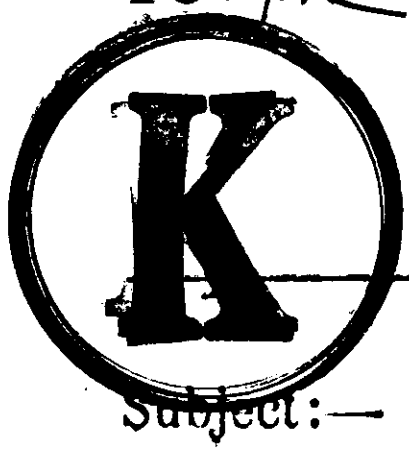
1942

File No. O Press (E.P.)/42



Legal **DEPARTMENT**
A **BRANCH**

Subject:—

Opinions under the Indian Press (Emergency Powers) Act, 1931

29/E

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11644 15-12-41.

Submitted.

2 The question raised in these papers is whether the article by S.Srinivasan, published in "Mahratta" of the 28th November 1941(p.1 ante) comes within the purview of section 4(1)(h) of the Press (Emergency Powers) Act, 1931, or is covered by Explanation 4 tothat sub-section. The H.D. (Special) is of the opinion that the last paragraph of the article is particularly bad and that the article read as a whole would come under section 4(1)(h) and would not be saved by Explanation 4. The R.L.A. has been requested to state whether he agrees with this view.

3 The question is whether the article in question contains words which tend directly or indirectly, to promote feelings of enimity or hatred between different classes of His Majesty's subjects; and if so, whether those words point out, without malicious intentions and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of His Majesty's subjects.

4 It appears from perusal of the article as a whole that it is an attempt toshow that the demand of the Muslims for stopping music before mosques is unreasonable and that the banning of music before mosque during the congregational hours is unjutifiable. No doubt the passages in which the Muslims are accused of having deliberately built mosques inthe route of the Hindu processions with the intention of creating difficulties and the passage stating that the psychology behind the Muslim demand is, really the assertion of a spirit of dominance and superiority of the believer over the Kaffirs and attributing malicious intentions to Muslims are likely to excite feelings of enmity and hatred in the minds of Hindus against Muslims. These are however isolated passages xxxxxxx /

and if it does not appear that the article read as a whole comes within the mischief of Sec 4 (1)(h) of the Indian Press (E.P.) Act 1931

AS Id./ S.T.K. 17-12

ALS I am afraid that the above view is a lenient one. In my opinion the article does indirectly tend to promote feelings of enmity or hatred between Hindus and Muslims and would not be protected by Expln 4 . If R.L.A. agrees the papers may be seen and returned.

(2) The R.L.A , agrees with the view taken by A.S.H.D. s p. 4 ante.

Id/------ 18-12-41

R.L.A.

Office of the R.L.A.

The article in question is objectionable in parts but when read as a whole it is doubtful if it can properly be held to come within the mischief of section 4(1)(h) of the Indian Press(Emergen -cy powers) Act, 1931.

O.C. Id/ P.N.M,

Remembracner of Legal Affairs.

U.R. to H.D.(Spl.), No. 11022, dated the 22nd December 1941.

Submitted.

The question for the consideration of the R.L.A. whether the articles in the Vishwamitra issues of 30th ember and 23rd November 1942 are actionable under sec. Indian States(Protection against Disaffection) Act, 1922 or clause (j) of Sec. 4(1) of the Indian Press (Emergency Powers Act,1931.

2 Article in Vishwamitra dated 30-9-42 under the heading "Student" Procession and Agitation-Sensation among the public due to Police Capriciousness".

Under sub-sec.(1) of sec.3 of the Indian States (Protection against Disaffection)Act, 1922 however edits, prints, or publishers or is the author of any book, newspaper or other document which brings or is intented to bring into hatred or contempt, or excites or is intended to excite disaffection towards any Prince or Chief of a State in India or the Govt. or Administration established in any such State shall be punishable with imprisonment which may extend to five years with fine or with both. Under sub-section (2) no person shall be deemed to commit an offence in respect of any book or newspaper which without exciting or being intended to excite hatred contempt or disaffection, contains comments expressing disapprobation of the measures of any such Prince, Chief, Govt. or Administration with a view to obtain their attraction by lawful means or disapprobation of the administrative or other action of any such Prince, Chief, Govt or Administration. In the first paragraph of the Article in question it is reported that five students were arrested for taking out a procession and taken to the Police Station and there they were frightened, threatened, beaten and released at night. The next day the students who went in procession with the national flag were arrested and taken to the Police Station. The article further states that Police capriciousness had increased and the public had become excited. The criticism is made against the police and there appears nothing in the

first para of the article to show that it is intended to bring into hatred or contempt or is intended excite disaffection towards the Prince, Chief, of the State or the Govt The terms "Govt." and "Administration" cannot mean some abstract conception but refer to real concrete, existing bodies of human beings capable of passing measures and performing acts"(Parkash Chand v. Crown I.L.R. 18 Lah, 446 at 449) No attack appear to have been against Administration or Govt. but against the police for its high-handedness.

In the second para of the article allegation is made against the Government of the State that it purchases jawar at a cheap rate from the farmers from the Wahidpur distruct and sells it outside at a higher rate, and that there is much anxiety among the farmers on account of scarcity of grain. This is an attack on the Government of the State and it would appear to fall within the mischief of sec. 3(1) of the Indian States (Protection against Disaffection) Act, 1922 and sec. 4(1)(j) of the Indian Press (Emergency Powers) Act, 1931.

3 Article dated 23.11.42 under the heading "Hunger Strike in Jail" It is not clear whether the attack is made against the police or the State. As observed by Addison Jin Parkash Chand v. The Crown (I.L.R. 18 Lah.p.451 at 457) "The questin is one of fact whether the words employed directly or indirectly tend to bring into hatred or contempt or to create disaffection towards the administration established in any State inIndia.....I might add that it would clearly be an eay thing to disguise a malicious attack upon Govt. or an administration under the guise of an attack on some of the officers of Govt. or an administration carrying out the policy of Govt." From the last sentence "The political prisoners are not allowed to see their relatives"it appears that the article aims at attacking Govt. or the Administration.

The article would, therefore, appear to be actionable under sec.3(1)

of the Indian States (Protectionagainst Disaffection) Act, 1922 and sec. 4(1)(j) of the Indian Press (I.P.) Act, 1931.

Sd./ S.P.B. 17/12.

Office of the R.L.A.

A criticism ofacts of the police which represents one of thechief agencies of Government will be indictable if the natural effect of thewords used is to infuse hatred or contempt of Government (see 56 Cal.1085). It is no doubt true that the news item published in theissue of the "Vishwamitra" of Bombay data d 30-9-1942 (at p.7 ante) con tains a critism of the acts of the Indore Police at Pahidi in arresting the students and releasing them at xxxtx night after fringtening threatening and beating them and a state that the police capriciousness is increasiing and thepublic has become excited; but the report does not appear exciting hatred, contempt or disa fection against the Indore Admini straion. Consequently th repr t does not appear to be strong enough to be actionable under clause (j) of section 4(1) of the Indian Press (EmergencyPowers) Act, 1931 or section 3 of the Indian States(Protection Againt Disaffec tion) Act, 1922.

2 The article "Hunger Strike" in Jail" ap earing in the issue of the"Vishwamitra" dated 23-11-1942(at p.17ante) describes the cruel treatment meted out to the prisoners i Jodhpur Jail. It alleges that seven(presumably political prisoners were confiened in a dark cell without a y cause, thatthey could not sit down and that thepolitical prisoners were not allowed to see their relatives. These al egation though primirily levelled against thejail administra tion a pear t be intended to bring into hatred or contemp or to e cite disafection towards the administration of the Jodhpur State fer as observed in Prakashchand v- The Crow (I.L.R.18 Lahore 451 at 457) it is "an easy thing to disgu a malicous attack upon Govenment under theguise of an atta on some of theofficers of Government of an administration carryijg out thepolicy of Government." The article would therefore appear to come within the purview of section 3(1)

of the Indian States (Protection Against Disaffection) Act, 1922 and clause (j) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

Id./P.N.M. 12/12

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.) No. 10193, dated 22nd December 1942.